

Construction contractors that make improvements to real estate by taking materials off the market and permanently affixing them to real estate owe Use Tax on the cost price of those materials. See 86 Ill. Adm. Code 130.2075. (This is a GIL).

December 11, 2002

Dear Xxxxx:

This letter is in response to your letter of August 1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Please provide us guidance on the following:

Our client is an appliance dealer that sells wholesale and retail, including sales to building contractors for new construction. This appliance dealer also installs the appliances they sell. Items installed by our client and considered 'built-ins' by them are as follows:

- Wall ovens
- Cook-tops
- Disposals
- Built-in dishwashers
- Built-in refrigerators
- Hoods

Our interpretation of the Illinois sales tax laws is as follows:

If the appliance dealer sells and installs an appliance requiring 'built-in' installation (appliances listed above) that appliance dealer is required to charge retail sales tax on that item based on the dealer's cost of that item and not based on the retail-selling price. We are also under the impression that the dealer is not required to even show a sales tax charge on the invoice but could simply include the sales tax charge in the 'grossed-up' price of the item. We believe this would apply to retail sales including building contractor sales as long as the appliance dealer is doing the installation himself on that 'built-in' item.

Could you please provide us with a letter ruling on the above stated matter? Any clarification of this would be greatly appreciated. If you have any questions, we can be contacted at #.

Construction contractors that make improvements to real estate by taking materials off the market and permanently affixing them to real estate in Illinois owe Use Tax on the cost price of those materials. See the enclosed copies of 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Those construction contractors do not incur Retailers' Occupation Tax liability when they permanently affix tangible personal property to real estate. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

In addition, where the seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed as tangible personal property by the retailer, the receipts from such installation charges must be included in the gross receipts upon which his Retailers' Occupation Tax liability is measured if such installation charges are included in the selling price of the property being sold. See the enclosed copy of 86 Ill. Adm. Code 130.450. However, if the installation is to permanently affix the tangible personal property to real estate, the retailer is acting as a construction contractor and he incurs a Use Tax liability only on his cost price of materials (see above).

If, the seller and buyer agree upon the installation charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation charges are not a part of the "selling price" of the tangible personal property which is sold. Instead such charges constitute a service charge, separately contracted for, which need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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